

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION**

STUDENTS FOR FAIR ADMISSIONS, INC.,

Plaintiff,

v.

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (HARVARD CORPORATION),

Defendant.

Civil Action No. 1:14-cv-14176-ADB

**Motion to File Under Seal Granted
June 14, 2018 [Dkt. 411]**

**DECLARATION OF FELICIA H. ELLSWORTH IN
SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, Felicia H. Ellsworth, hereby state under oath:

I am a member in good standing of the bar of the Commonwealth of Massachusetts and this Court, and am a partner at Wilmer Cutler Pickering Hale and Dorr LLP. I am one of the counsel representing Defendant President and Fellows of Harvard College (Harvard Corporation) (“Harvard”) in the above-captioned matter. I submit this declaration in support of Harvard’s Motion for Summary Judgment.

1. Attached hereto as Exhibit 1 is a true and accurate copy of excerpts of the June 18, 2015 deposition of Marilyn McGrath.
2. Attached hereto as Exhibit 2 is a true and accurate copy of excerpts of the July 12, 2016 deposition of Edward Blum.
3. Attached hereto as Exhibit 3 is a true and accurate copy of excerpts of the March 6, 2017 deposition of Caroline Weaver.

4. Attached hereto as Exhibit 4 is a true and accurate copy of excerpts of the March 10, 2017 deposition of Drew Faust.

5. Attached hereto as Exhibit 5 is a true and accurate copy of excerpts of the March 24, 2017 deposition of Elizabeth Yong.

6. Attached hereto as Exhibit 6 is a true and accurate copy of excerpts of the April 7, 2017 deposition of Grace Cheng.

7. Attached hereto as Exhibit 7 is a true and accurate copy of excerpts of the April 11, 2017 deposition of Michael Smith.

8. Attached hereto as Exhibit 8 is a true and accurate copy of excerpts of the April 27, 2017 deposition of Rakesh Khurana.

9. Attached hereto as Exhibit 9 is a true and accurate copy of excerpts of the May 4, 2017 deposition of Roger Banks.

10. Attached hereto as Exhibit 10 is a true and accurate copy of excerpts of the May 10, 2018 deposition of Richard Fisher.

11. Attached hereto as Exhibit 11 is a true and accurate copy of excerpts of the May 16, 2017 deposition of [REDACTED].

12. Attached hereto as Exhibit 12 is a true and accurate copy of excerpts of the June 6, 2017 deposition of Sarah Donahue.

13. Attached hereto as Exhibit 13 is a true and accurate copy of excerpts of the June 7, 2017 deposition of Tia Ray.

14. Attached hereto as Exhibit 14 is a true and accurate copy of excerpts of the June 14, 2017 deposition of Lucerito Ortiz.

15. Attached hereto as Exhibit 15 is a true and accurate copy of excerpts of the June 16, 2017 deposition of [REDACTED].

16. Attached hereto as Exhibit 16 is a true and accurate copy of excerpts of the June 20, 2017 deposition of Kaitlin Howrigan.

17. Attached hereto as Exhibit 17 is a true and accurate copy of excerpts of the June 28, 2017 deposition of Brock Walsh.

18. Attached hereto as Exhibit 18 is a true and accurate copy of excerpts of the June 20, 2017 deposition of Chris Looby.

19. Attached hereto as Exhibit 19 is a true and accurate copy of excerpts of the July 12, 2017 deposition of [REDACTED].

20. Attached hereto as Exhibit 20 is a true and accurate copy of excerpts of the July 19, 2017 deposition of Mark Hansen.

21. Attached hereto as Exhibit 21 is a true and accurate copy of excerpts of the July 20, 2017 deposition of [REDACTED].

22. Attached hereto as Exhibit 22 is a true and accurate copy of excerpts of the July 24, 2017 deposition of [REDACTED].

23. Attached hereto as Exhibit 23 is a true and accurate copy of excerpts of the July 27, 2017 deposition of Erin Driver-Linn.

24. Attached hereto as Exhibit 24 is a true and accurate copy of excerpts of the July 27, 2017 deposition of [REDACTED].

25. Attached hereto as Exhibit 25 is a true and accurate copy of excerpts of the August 1, 2017 deposition of Marlyn McGrath.

26. Attached hereto as Exhibit 26 is a true and accurate copy of excerpts of the August 3, 2017 deposition of William Fitzsimmons.

27. Attached hereto as Exhibit 27 is a true and accurate copy of excerpts of the April 12, 2018 deposition of Peter Arcidiacono.

28. Attached hereto as Exhibit 28 is a true and accurate copy of the Rebuttal Report of Ruth Simmons, Ph.D., dated Mar. 15, 2018.

29. Attached hereto as Exhibit 29 is a true and accurate copy of excerpts of the April 27, 2018 deposition of David Card.

30. Attached hereto as Exhibit 30 is a true and accurate copy of excerpts of the May 1, 2018 deposition of Richard Kahlenberg.

31. Attached hereto as Exhibit 31 is a true and accurate copy of the Expert Report of Peter S. Arcidiacono, dated Oct. 16, 2017.

32. Attached hereto as Exhibit 32 is a true and accurate copy of the Expert Report of Richard D. Kahlenberg, dated Oct. 16, 2017.

33. Attached hereto as Exhibit 33 is a true and accurate copy of the Expert Report of David Card, Ph.D., dated Dec. 15, 2017.

34. Attached hereto as Exhibit 34 is a true and accurate copy of the Expert Report of Ruth Simmons, Ph.D., dated Dec. 15, 2017.

35. Attached hereto as Exhibit 35 is a true and accurate copy of the Rebuttal Expert Report of Peter S. Arcidiacono, dated Jan. 29, 2018.

36. Attached hereto as Exhibit 36 is a true and accurate copy of the Rebuttal Expert Report of Richard D. Kahlenberg, dated Jan. 29, 2018.

37. Attached hereto as Exhibit 37 is a true and accurate copy of the Rebuttal Report of David Card, Ph.D., dated Mar. 5, 2018.

38. Attached hereto as Exhibit 38 is a true and accurate copy of Richard D. Kahlenberg's Supplemental Expert Report Regarding the Final Report of the Committee to Study Race-Neutral Alternatives, dated April 26, 2018.

39. Attached hereto as Exhibit 39 is a true and accurate copy of excerpts of Plaintiff's Objections and Responses to Defendants' Second Set of Interrogatories, dated July 20, 2017.

40. Attached hereto as Exhibit 40 is a true and accurate copy of Plaintiff's Supplemental Response to Interrogatory No. 5.

41. Attached hereto as Exhibit 41 is a true and accurate copy of a document entitled President's Report 1993–1995, Harvard University, HARV00030365–HARV00030450.

42. Attached hereto as Exhibit 42 is a true and accurate copy of a document entitled Confidential Briefing for Jim Ryan, Student Diversity Committee, dated June 26, 2014, HARV00072365–HARV00072374.

43. Attached hereto as Exhibit 43 is a true and accurate copy of a document entitled Committee Meeting, September 24, 2014, HARV00072343.

44. Attached hereto as Exhibit 44 is a true and accurate copy of a document entitled Report of the College Working Group on Diversity and Inclusion, dated Nov. 2015, HARV00007944–HARV00007982.

45. Attached hereto as Exhibit 45 is a true and accurate copy of a document entitled Report of the Committee to Study the Importance of Student Body Diversity, HARV00008048–HARV00008069.

46. Attached hereto as Exhibit 46 is a true and accurate copy of a document entitled Race Neutral Alternatives Committee Charge, dated June 9, 2017, HARV00072381.

47. Attached hereto as Exhibit 47 is a true and accurate copy of a document entitled Report of The Committee to Study Race-Neutral Alternatives, dated April 2018, HARV00097310–HARV00097328.

48. Attached hereto as Exhibit 48 is a true and accurate copy of a document entitled For Entrance in Fall 2015, Application Supplement, HARV0005429–HARV00005431.

49. Attached hereto as Exhibit 49 is a true and accurate copy of a document entitled The Common Application, First-Year Application, HARV00003562–HARV00003577.

50. Attached hereto as Exhibit 50 is a true and accurate copy of a document entitled Universal College Application, First-Year Admissions Application, HARV00003556–HARV00003561.

51. Attached hereto as Exhibit 51 is a true and accurate copy of excerpts of a document entitled New Staff Training Schedule, HARV00000371.

52. Attached hereto as Exhibit 52 is a true and accurate copy of a document entitled 2012 Casebook, HARV00000212–HARV00000321.

53. Attached hereto as Exhibit 53 is a true and accurate copy of a document entitled Discussion Guide to the 2012 Casebook, Harvard College Admissions, HARV00018164–HARV00018176.

54. Attached hereto as Exhibit 54 is a true and accurate copy of a document entitled Interviewer Handbook 2013–2014, HARV00001145–HARV00001191.

55. Attached hereto as Exhibit 55 is a true and accurate copy of a document entitled Interviewer Handbook 2014–2015, HARV00001392–HARV00001438.

56. Attached hereto as Exhibit 56 is a true and accurate copy of a document entitled Reading Procedures, Class of 2017, HARV00009881–HARV00009903.

57. Attached hereto as Exhibit 57 is a true and accurate copy of a document entitled Reading Procedures, Class of 2018, HARV00015410–HARV00015427.

58. Attached hereto as Exhibit 58 is a true and accurate copy of a document entitled Note on the Collection and Reporting of Data on Race and Ethnicity, HARV00065450–HARV00065452.

59. Attached hereto as Exhibit 59 is a true and accurate copy of a document entitled Addendum on the Collection and Reporting of Data on Race and Ethnicity, HARV00030509–HARV00030512.

60. Attached hereto as Exhibit 60 is a true and accurate copy of a document entitled Harvard Admissions Officer Undergraduate Minority Recruitment Coordinator Manual, dated Summer 2012, HARV00036378–HARV00036401.

61. Attached hereto as Exhibit 61 are true and accurate copies of redacted applications for admission to Harvard College, HARV00070279-70354; HARV00071146-71190; HARV00071702-71746; and HARV00071791-71829.

62. Attached hereto as Exhibit 62 is a true and accurate copy of a document entitled Demographic Breakdown of Applicants, Admits, and Matriculants, HARV00032509–HARV00032524.

63. Attached hereto as Exhibit 63 is a true and accurate copy of an email from Katey Stone to Grace Cheng and Nathan Fry, with subject line “FW: Harvard Women’s Ice Hockey,” dated Nov. 30, 2012, HARV00022645.

64. Attached hereto as Exhibit 64 is a true and accurate copy of a document entitled Memorandum to Members of the Corporation from Drew Faust and Mike Smith, Proposed Changes in Admissions Policy, dated Feb. 2, 2011, HARV00030303–HARV00030332.

65. Attached hereto as Exhibit 65 is a true and accurate copy of a document entitled Office of Institutional Research, Admissions and Financial Aid at Harvard College, For Discussion, dated Feb. 2013, HARV00031687–HARV00031772.

66. Attached hereto as Exhibit 66 is a true and accurate copy of a document entitled Office of Institutional Research, Admissions Part II, dated Feb 14, 2012, HARV00065741–HARV00065774.

67. Attached hereto as Exhibit 67 is a true and accurate copy of a document entitled Harvard College Admissions and Low Income Students, dated May 1, 2013, HARV00023548–HARV00023555.

68. Attached hereto as Exhibit 68 is a true and accurate copy of a webpage entitled *Mission Vision and History*, Harvard College, <https://college.harvard.edu/about/mission-and-vision> (last visited June 8, 2018).

69. Attached hereto as Exhibit 69 is a true and accurate copy of a webpage entitled *Letter from Dean Khurana to Harvard College Students*, Harvard College (Nov. 19, 2015), <https://college.harvard.edu/about/dean-rakesh-khurana/messages-students/final-report-working-group-diversity-and-inclusion>.

70. Attached hereto as Exhibit 70 is a true and accurate copy of an article entitled *Melissa C. Rodman & Luca F. Schroeder, Faculty Unanimously Endorse Student Diversity*, The Harvard Crimson (Feb. 3, 2016), <https://www.thecrimson.com/article/2016/2/3/faculty-endorse-student-diversity/>.

71. Attached hereto as Exhibit 71 is a true and accurate copy of an article entitled *Support for a Diverse Student Body*, Harvard Gazette (Feb. 16, 2016), <https://news.harvard.edu/gazette/story/2016/02/support-for-a-diverse-student-body>.

72. Attached hereto as Exhibit 72 is a true and accurate copy of a webpage entitled *Harvard at a Glance*, Harvard University, <https://www.harvard.edu/about-harvard/harvard-glance> (last visited June 11, 2018).

73. Attached hereto as Exhibit 73 is a true and accurate copy of an article entitled *Let the Admissions Begin*, Harvard Gazette (Dec. 15, 2011), <https://news.harvard.edu/gazette/story/2011/12/early-action/>.

74. Attached hereto as Exhibit 74 is a true and accurate copy of a webpage entitled *Application Requirements*, Harvard College Admissions & Financial Aid, <https://college.harvard.edu/admissions/application-requirements> (last visited June 11, 2018).

75. Attached hereto as Exhibit 75 is a true and accurate copy of a webpage entitled *Application Timeline*, Harvard College Admissions & Financial Aid, <https://college.harvard.edu/admissions/apply/application-timeline> (last visited June 9, 2018).

76. Attached hereto as Exhibit 76 is a true and accurate copy of a webpage entitled *Transferring to Harvard College*, Harvard College Admissions & Financial Aid,

<https://college.harvard.edu/admissions/application-process/transferring-harvard-college> (last visited June 10, 2018).

77. Attached hereto as Exhibit 77 is a true and accurate copy of a webpage entitled *Frequently Asked Questions*, Harvard College, <https://college.harvard.edu/frequently-asked-questions> (last visited June 11, 2018).

78. Attached hereto as Exhibit 78 is a true and accurate copy of a webpage entitled *What is FAS?*, Harvard Faculty of Arts and Sciences, <https://www.fas.harvard.edu/pages/what-fas> (last visited June 11, 2018).

79. Attached hereto as Exhibit 79 is a true and accurate copy of an article entitled *Financial Aid Program Draws Record Number of Applicants*, Harvard Gazette (Apr. 2, 2009), <https://news.harvard.edu/gazette/story/2009/04/financial-aid-program-draws-record-number-of-applications/>.

80. Attached hereto as Exhibit 80 is a true and accurate copy of a webpage entitled *Fact Sheet*, Harvard College Griffin Financial Aid Office, <https://college.harvard.edu/financial-aid/how-aid-works/fact-sheet> (last visited June 11, 2018).

81. Attached hereto as Exhibit 81 is a true and accurate copy of a webpage entitled *Net Price Calculator*, Harvard College Griffin Financial Aid Office, <https://college.harvard.edu/financial-aid/net-price-calculator> (last visited June 11, 2018).

82. Attached hereto as Exhibit 82 is a true and accurate copy of an article entitled *1,962 admitted to Class of '22*, Harvard Gazette (Mar. 28, 2018), <https://news.harvard.edu/gazette/story/2018/03/1962-admitted-to-harvard-college-class-of-22/>.

83. Attached hereto as Exhibit 83 is a true and accurate copy of an article entitled *Joan Biskupic, A Litigious Activist's Latest Cause: Ending Affirmative Action at Harvard*, Reuters (June 8, 2015), <https://www.reuters.com/investigates/special-report/usa-harvard-discrimination/>.

84. Attached hereto as Exhibit 84 is a true and accurate copy of a document entitled College Board, *Descriptor PLUS™ Cluster Description Guide 2-4* (2011), <http://media.collegeboard.com/digitalServices/pdf/miscellaneous/ClusterDescriptionGuide.pdf>.

85. Attached hereto as Exhibit 85 is a true and accurate copy of a document entitled Articles of Incorporation of Students for Fair Admissions, Inc., dated July 29, 2014, SFFA-Harvard0000002–SFFA-Harvard0000007.

86. Attached hereto as Exhibit 86 is a true and accurate copy of a document entitled Organizational Action Taken by the Sole Incorporator of Students for Fair Admissions, Inc., dated July 31, 2014, SFFA-Harvard 0000105–SFFA-Harvard 0000106.

87. Attached hereto as Exhibit 87 is a true and accurate copy of a document entitled Unanimous Written Consent in Lieu of an Organizational Meeting of Board of Directors of Students for Fair Admissions, Inc., dated August 6, 2014, SFFA-Harvard 0000068–SFFA-Harvard 0000097.

88. Attached hereto as Exhibit 88 is a true and accurate copy of a document entitled Form 1023 (Application for Recognition of Exemption) on behalf of Students for Fair Admissions, Inc. (EIN:47-1689810), dated Oct. 8, 2014, SFFA-Harvard 0000008–SFFA-Harvard 0000051.

89. Attached hereto as Exhibit 89 is a true and accurate copy of a document entitled Unanimous Written Consent In Lieu of a Meeting of the Board of Directors of Students for Fair Admissions, Inc., Amendment of Bylaws, dated June 19, 2015, SFFA-Harvard 0000052–SFFA-Harvard 0000067.

90. Attached hereto as Exhibit 90 is a true and accurate copy of a document entitled Annual Report of Students for Fair Admissions (SFFA), dated June 30, 2015, SFFA-Harvard0000119–SFFA-Harvard0000122.

91. Attached hereto as Exhibit 91 is a true and accurate copy of SFFA's Form 990 filed with the IRS for the calendar year ending December 31, 2015, SFFA-Harvard0001965–SFFA-Harvard0001986.

92. Attached hereto as Exhibit 92 is a true and accurate copy of SFFA's Form 990 filed with the IRS for the calendar year ending December 31, 2016.

93. Attached hereto as Exhibit 93 is a true and accurate copy of a document entitled Declaration of [REDACTED], dated June 17, 2016, SFFA-Harvard0001955–SFFA-Harvard0001966.

94. Attached hereto as Exhibit 94 is a true and accurate copy of a webpage entitled *Standing Committees Listed Alphabetically*, Harvard University Faculty of Arts and Sciences, Office of the Secretary (last visited June 14, 2018),
<https://wiki.harvard.edu/confluence/display/secfas/Standing+Committees+Listed+Alphabetically>.

95. Attached hereto as Exhibit 95 is a true and accurate copy of a document entitled Coalition Application Profile.

96. Attached hereto as Exhibit 96 is a true and accurate copy of the Declaration of Ruth Simmons, Ph.D., dated June 15, 2018.

97. Attached hereto as Exhibit 97 is a true and accurate copy of the Declaration of David Card, Ph.D., dated June 15, 2018.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this day, June 15, 2018.

/s/ Felicia H. Ellsworth

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*Counsel for Defendant President and
Fellows of Harvard College*

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and the sealed version of this document will be served on counsel for SFFA by email.

/s/ Felicia H. Ellsworth
Felicia H. Ellsworth